

BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

Meeting Date: February 19, 2003
Bulk Item: Yes No X

Division: Growth Management
Department: Building

AGENDA ITEM WORDING: Continuation of a public hearing to adopt an ordinance amending Sections 9.5-316.1, 9.5-316.2, and 9.5-317, Monroe County Code [Floodplain Management Regulations].

ITEM BACKGROUND: The BOCC approved continuing a public hearing to consider proposed amendments to the County's floodplain management regulations at the last two scheduled meetings until February 19, 2003, meeting. The last continuation was to allow Growth Management and the County legal staff to work with the Board's FEMA Liaison (Commissioner McCoy) to develop an alternative approach to meet the compliance requirements established by FEMA for participation in the National Flood Insurance Program rather than the proposed amendments.

Since the Commission's last scheduled meeting in January, the County Administrator and Growth Management and County legal staff have met with Commissioner McCoy to review and refine a proposed alternative approach. The group decided that further revisions were necessary on this approach before it can be submitted to FEMA for review.

The County Attorney and staff have met with Commissioner McCoy to review and refine a draft alternative approach prepared by the Growth Management Division staff. The draft is to undergo further revisions before submittal to FEMA for review. When the final revisions are completed, it was the consensus of the Commission and staff that it would be in the County's best interest to have a face to face meeting with FEMA staff in Atlanta to discuss the proposal.

As it is uncertain how long it will take to reach agreement with FEMA on suitable alternative approach to the one proposed in the draft amendments to the County's floodplain regulations, the Growth Management staff will request the BOCC to table the proposed ordinance at the February 19, 2003, Commission meeting. The public hearing will be rescheduled and re-advertised, once a substitute amendment is prepared for the alternative approach.

PREVIOUS RELEVANT BOARD ACTION: BOCC approved continuation of public hearing on January 15, 2003, to February 19, 2003, 5:01p.m., in Key Largo.

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATION: Approve the tabling of the proposed amendments to the floodplain regulations.

TOTAL COST: N/A

BUDGETED: Yes No N/A

COST TO COUNTY: N/A

SOURCE OF FUNDS: N/A

REVENUE PRODUCING: Yes N/A No _____

AMOUNT PER MONTH N/A YEAR

APPROVED BY: County Attorney X

OMB/Purchasing	N/A	Risk Management	N/A
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DIVISION DIRECTOR APPROVAL:

Timothy J. McGarry, AICP

DOCUMENTATION: Included X

To follow _____ Not Required

DISPOSITION: _____

AGENDA ITEM #: 17

County of Monroe


Growth Management Division
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Board of County Commissioners
Mayor Dixie Spehar, District 1
Mayor Pro Tem Murray Nelson, District 5
Comm. Charles "Sonny" McCoy, District 3
Comm. George Neugent, District 2
Comm. David Rice, District 4

MEMORANDUM

TO: Board of County Commissioners

FROM: Timothy J. McGarry, AICP
Director of Growth Management 

DATE: December 26, 2002

SUBJECT: **Proposed Amendments to County Floodplain Regulations:
Chapter 9.5, Article VII, Division 6, Monroe County Code**

Overview

The Board of County Commissioners will be asked to consider adopting amendments to the County's Floodplain Management Regulations at its January 15, 2003, regularly scheduled meeting in Key West. This item was continued from the last meeting.

Mr. Brad Loar from the Federal Emergency Management Agency (FEMA) will be in attendance. Prior to the scheduled public hearing on the ordinance, he will conduct a one-hour work session during the Board's regularly scheduled meeting to answer the Board's questions and discuss FEMA's requirements as it pertains to the County's proposed ordinance.

The proposed ordinance is primarily intended to respond to actions adopted by the BOCC as part of the Revised Implementation Plan for the Flood Insurance Inspection and Compliance Program approved by the Federal Emergency Management Administration (FEMA). This memorandum provides a policy background on the need for the proposed amendments, a staff evaluation of the existing regulations and, a description of Planning Commission deliberations on proposed amendments, and a summary of the major revisions proposed.

Policy Background

The last major revisions made to the floodplain regulations were in June, 2000. At that time, after considerable public input received at public workshops and hearings, the regulations were relaxed to reflect the minimum necessary standards to meet FEMA requirements and comply with the Florida Statutes. The most notable revision was the elimination of the "cumulative cost requirement" over the life of the structure applied in determining if the 50 percent substantial threshold requirement was achieved for non-conforming, pre-FIRM, structures.

A subsequent Circuit Court decision eliminated the exclusion of floodplain violations from the four-year statute of limitations governing prosecution of code violations. In the opinion of FEMA, this court decision rendered the County's floodplain ordinance as unenforceable. Ironically, at the insistence of FEMA, the County had specifically amended Section 6.3-14 of the Monroe County Code in the early 1990s to exclude floodplain violations from the four year statute of limitations governing prosecution of code violations.

When the Board of County Commissioners (BOCC) entered into negotiations with FEMA to initiate the Flood Insurance Inspection Program, that agency required the County to submit a remedial implementation plan to address this deficiency in order to avoid probationary status scheduled to begin on May 31, 2002. The remedial plan was necessary to demonstrate to FEMA how the County would ensure that no additional new unlawful structures would be created and how the County would bring into compliance existing structures with violations four years or older.

On April 17, 2002, the BOCC adopted Resolution #187-2002 (Exhibit 1) approving the remedial implementation plan. An essential element of the remedial implementation plan, which was approved by the FEMA, calls for the application of restrictive covenants on any permitted enclosed below base flood enclosure with an opaque covering to allow the County the right to inspect the enclosure to ensure compliance with the floodplain ordinance. The remedial implementation plan also calls for a restrictive covenant to be placed on any downstairs enclosure found to have unlawful improvements during the Flood Insurance Inspection Program that will require a demolition permit to be brought into full compliance with the floodplain management regulations.

Review of Existing Ordinance

The County Growth Management Division staff initiated its review of the existing floodplain management ordinance soon after the action taken by the BOCC on the remedial implementation plan. The staff focused its revision efforts on: expanding the requirement for a restrictive covenant to include all enclosed below base flood structures with opaque coverings; reorganizing and clarifying the existing language; and providing more definitions.

While preparing its proposed amendments to the floodplain regulations, the staff also reviewed recommendations of the Citizen Code Committee contained in its "Final Report" dated July 17, 2002. The following are the staff responses to that committee's floodplain management recommendations:

- O *Elimination of requirement for deed restriction, affidavits, and mandatory inspections for finished materials.* The Committee believes this existing requirement for basic wall, floor, and ceiling finish materials used in below base flood elevation enclosures shows a basic distrust of the County residents. Unfortunately, the Florida law that limits the County's right to enter dwellings for code compliance and the four-year statute of limitations on prosecution of code violations leave the County no viable option. Without the restrictive covenant provisions to allow County inspections, FEMA would find the County's floodplain

regulations unenforceable. The number of violations (estimated 5,000 to 7,000) attests to the problems in enforcing the floodplain regulations and the need to ensure that property owners won't just continue to make illegal improvements to these properties after the flood insurance inspection program is completed. Therefore, the BOCC made this commitment to require these restrictive covenants as part of its remedial implementation plan; any change in this approach may jeopardize the County's compliance with this FEMA approved plan. [Note: As a correction to the erroneous information presented in numerous articles printed in the local newspapers, the application of paint as a protective covering is not regulated as "finish" material and is allowed by right within downstairs enclosures.]

- O *Limited storage should be changed to simple "storage" to allow for household good and other items.* Unfortunately, limited storage, as defined in the FEMA's regulations, policies, technical bulletins, and interpretive guidance, does not allow the storage of furniture or other indoor articles in below base flood enclosures. Therefore, the definition of what constitutes "limited storage" can not be expanded to be less restrictive.
- O *Floodplain standards should be the minimum required.* In its last revision, the County adopted the most minimum level of floodplain standards that was consistent with the FEMA regulations and the Florida Statutes. The proposed regulations are more restrictive than the minimum, because the need to include the requirement for restrictive covenants, if property owners choose to enclose their below base flood structure with an opaque covering. In addition to other coastal communities, which have banned opaque coverings of below base flood enclosures altogether because of the enforcement problems with such improvements, Monroe County prohibited such enclosures between 1983 and 1986.
- O *Require a new certificate of occupancy when a residence changes ownership to ensure compliance with regulations.* Although the staff did not investigate the legality of such an approach in Florida and the administrative issues related to its implementation, the bottom line is what would it accomplish? It would provide new homeowners with real information on their purchase concerning compliance of their property with County Code; however, the four-year statute of limitations would preclude any violations of four or more years old from being corrected and the structure brought into compliance. The County simply could not withhold granting a certificate of occupancy based on any violation greater than four years old.
- O *Allow recreational uses of space in enclosed below base flood enclosures.* Unfortunately, recreational use (such as a workshop) is considered by all FEMA regulations and policies as disallowed habitable use of below base flood enclosed space. The County used to allow such uses, until FEMA put an end to this practice in the early 1980s.

Planning Commission Hearings

The staff's proposed amendments to the County's floodplain management regulations were considered at three public hearings held by the Planning Commission. As a result of input from the public and deliberations by the Planning Commission, additional revisions were made to the draft amendments initially proposed by County staff.

The Planning Commission was able to reach agreement on all proposed revisions to the regulations except for Section 9.5-317 (b)(1)d.(iv). As shown in Attachment A of the Planning Commission's resolution (Exhibit 2) recommending approval of the revised amendments, the Planning Commission was evenly divided between supporting the staff's recommended language (Option 1) and substitute language proposed by two of the Commissioners (Option 2).

Option 1 language excludes materials and finishes normally associated with living areas constructed above base flood elevation from areas below base flood elevation. This policy has been one historically followed by County staff. Option 2 would allow these materials in enclosed areas below elevated buildings as long as the materials used were not below base flood.

The staff recommended against Option 2 because it further encourages property owners to use and/or make improvements to downstairs that are not compliant with the floodplain management regulations. In his letter to Dianne Bair (Exhibit 3), Mr. Brad Loar, Chief of Community Mitigation Program Branch for FEMA Region IV stated that this option weakens the flood plain management ordinance, which would go against the County's pledge and agreement with FEMA to discourage the further conversion of uninhabitable enclosures to full living areas, even if restrictive covenants are put in place. Therefore, the County staff is concerned that such language may further complicate the County's relationship with FEMA and sends the wrong message to the public, especially in cases where a significant portion of a subject enclosure is above base flood elevation.

Proponents of Option #2 believe that such improvements should be permitted because they are not an insurance issue, as such improvements in below base flood areas are not insured under the National Flood Insurance Program. Furthermore, Federal policy directives strongly recommend against, but do not explicitly prohibit the use of such materials in enclosed parking and storage areas as long as the materials are applied to above base flood elevated areas of the enclosure.

The Planning Commission also requested that language be included in the proposed amendments that requires that the form of the proposed restrictive covenants to be applied to subject properties be approved by that body. A copy of the proposed restrictive covenant approved by the Planning Commission is attached as Exhibit 4.

Major Recommended Amendments

The proposed ordinance amending the County's floodplain management regulations is attached as Exhibit 5. Added new text is underlined and deleted text is shown with a ~~striketrough~~. Where

appropriate, explanatory footnotes are provided in cases where such new language is not primarily "housekeeping" in nature.

The following are the most significant amendments proposed for the floodplain management regulations:

- O Section 9.5-316.2(f), definitions-Market Value: *Modifies the procedural process for approving cost approach appraisals by eliminating the role of the Construction Board of Adjustment and Appeals and replacing it with a process involving the building official and, if necessary submittal to and review by an independent third party appraiser. The Construction Board of Adjustment and Appeals has not been comfortable evaluating appraisals submitted by professional appraisers that are used to determine the substantial damage threshold. The revised process allows such appraisals to be approved by the Building Official. If the Building Official finds problems with the submitted appraisal, it would then be sent to an independent third party professional appraiser to determine if the cost appraisal is reasonable and can be used to establish market value for application of the floodplain management regulations. [It should be noted that in many communities, the Building Official has full and final authority to make determinations of the substantial damage threshold.]*
- O Section 9.5-317(b)(1)d.(i): *Requires as a condition of its building permit that any new dwelling with an opaque below base flood elevation enclosure or any addition to an existing enclosed below base flood elevation structure, have a restrictive covenant allowing the County to inspect the structure at a minimum interval of four years to ensure compliance with the floodplain management regulations. The restrictive covenant was proposed as part of the County's Implementation Plan approved by FEMA to address the four-year statute of limitations problem. The proposed language requires that the restrictive covenant is approved in form by the Planning Commission. The restrictive covenant requires that the property owner be given at least 30 days prior written notice by certified mail before the inspection may occur. It further requires that such inspections are for a limited purpose (i.e. compliance with the floodplain management regulations) and only to the extent necessary to inspect the downstairs enclosure for such compliance.*
- O Section 9.5-317(b)(1)d.(i): *Requires any structure found to have noncompliant, unlawful improvements during the flood insurance inspection program or through code enforcement action to have a restrictive covenant similar to that proposed for new construction above. This language implements the compliance procedures proposed in the County's implementation plan approved by FEMA for the Flood Insurance Inspection Program. The restrictive covenant will only be for those structures, which require a demolition/building permit to bring the structure into compliance with the floodplain regulations. A restrictive covenant may be avoided by eliminating any opaque covering of the downstairs enclosure to allow visual inspection by the County from public right-of-way.*
- O Section 9.5-317(b)(1)d.(iv), first sentence: *Expands allowable finishes on interior walls, ceilings, and floors in downstairs enclosures to include Class 4 materials. This*

amendment allows more types of basic wall, floor, and ceiling finish materials in downstairs enclosures.

- O Section 9.5-317(b)(1)d.(iv). Option 1: Explicitly codifies historical application of Technical Bulletin 2-93 requirements governing finishing materials, which was made less clear by amendments made to the floodplain regulations in 2000.
- O Section 9.5-317(b)(1)d.(iv). Option 2: Allows finishing materials normally associated with living areas constructed above base flood elevation to be used in uninhabitable below base flood enclosures as long as the finishes are above base flood elevation. As discussed previously, Option 2 is not recommended by County staff and is not supported by FEMA staff.

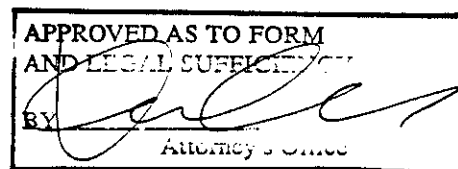
Additional Proposed Amendment

Subsequent to the December agenda package being sent out, it came to the Growth Management Division's attention that the language of Section 9.5-316.2 (b) needed to be revised as the existing language is confusing and does not accurately reflect foundation requirements. To clarify the language, the staff recommends that Section 9.5-316.2 (b) be revised in the proposed ordinance amending the floodplain regulations as follows:¹

- “(b) All building foundations shall rest directly on natural rock, on concrete piling driven to rock or on friction piling (concrete or wood) and shall be anchored to such rock support by holes, sixteen (16) inches in minimum diameter, augered into said rock a minimum depth of three (3) feet and reinforced by a minimum of four (4) number -4 five (#5) vertical rods extending up into the piers above a minimum of eighteen (18) inches and tied to the vertical steel of the pier. Wooden pilings shall be locked into sixteen (16) inch auger foundations by number five (#5) rebar extending through the piling and three (3) to five (5) inches beyond.”

Recommendation

The Growth Management Division staff finds the proposed amendments are consistent with the Monroe County Year 2010 Comprehensive Plan and Chapters 163 and 380, Florida Statutes and recommends that the Board of County Commissioners adopt the proposed ordinance that includes the language contained in Option 1 [Section 9.5-317(b)(1)d.(iv)] and amendments to Section 9.5-316.2 (b) identified in the previous section.



¹ This proposed amendment was initially sent to BOCC in a memorandum from the Growth Management Director dated December 13, 2002.

Exhibits

- Exhibit 1 Resolution 187-2002: Revised Implementation Plan for Flood Insurance Inspection and Compliance Program
- Exhibit 2 Planning Commission Resolution No. 69-02 Recommending Approval of Proposed Amendments to the Floodplain Management
- Exhibit 3 Letter to Ms. Dianne Bair from Brad Loar, FEMA, Region IV
- Exhibit 4 Proposed "Limited Storage and Parking Restrictive Covenant"
- Exhibit 5 Proposed Ordinance Amending Sections 9.5-316.1, 9.5-316.2, and 9.5-317, Monroe County Code [Floodplain Management Regulations]

RESOLUTION 187 -2002

A RESOLUTION AMENDING RESOLUTION NO. 115-2002 OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY APPROVING A REVISED IMPLEMENTATION PLAN FOR THE FLOOD INSURANCE INSPECTION AND COMPLIANCE PROGRAM FOR SUBMITTAL TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY

WHEREAS, the Board of County Commissioners ("BOCC") adopted Resolution No. 115-2002 on March 20, 2002, approving a remedial plan for submittal to the Federal Emergency Management Administration (FEMA), called the "Implementation Plan for Monroe County Flood Insurance Inspection and Compliance Program" to meet one of the requirements identified in a letter from FEMA's Region IV Director, dated January 14, 2002; and,

WHEREAS, FEMA Region IV office has responded to the remedial plan approved by the BOCC in a letter dated April 2, 2002, which requests that the County revise the plan to provide more detail on how the County will address structures more than four-years old in the inspection program;

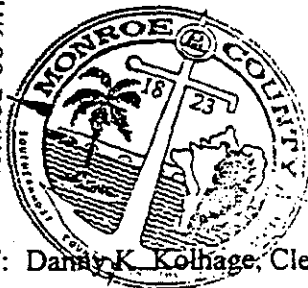
WHEREAS, the Growth Management Division staff, in consultation with FEMA Region IV staff, has prepared a revised remedial plan that addresses the need for further clarification and detail requested by FEMA; and,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA that:

Section 1. The BOCC hereby amends Resolution No. 115-2002, by replacing Exhibit 1, "Implementation Plan for Monroe County Flood Insurance and Inspection and Compliance Program", with a new Exhibit 1 which is hereby attached.

Section 2. The County Administrator is directed to expeditiously transmit this Resolution and attached exhibit to the Region IV office of FEMA.

PASSED AND ADOPTED Board of County Commissioners of Monroe County at a regular meeting of said Board held on the 17th day of April, A.D., 2002.



Mayor Charles 'Sonny' McCoy	<u>yes</u>
Mayor Pro Tem Dixie Spehar	<u>yes</u>
Commissioner George Neugent	<u>yes</u>
Commissioner Nora Williams	<u>absent</u>
Commissioner Murray Nelson	<u>yes</u>

(SEAL)
ATTEST: Darryl K. Kolhage, Clerk

BOARD OF COUNTY COMMISSIONERS OF
MONROE COUNTY, FLORIDA

By: Darryl K. Kolhage
Deputy Clerk

By: [Signature]
Mayor/Chairman

EXHIBIT 1
IMPLEMENTATION PLAN FOR
MONROE COUNTY
FLOOD INSURANCE INSPECTION AND
COMPLIANCE PROGRAM

Flood Insurance Inspection Program

- O Prior to March 14, 2002, the Growth Management Division staff submitted a complete list of the names and addresses of owners (policy holders provided by FEMA) of all structures less than four years old that may contain possible violations of the County's floodplain regulations to the Federal Emergency Flood Insurance and Mitigation Division (FEMA/NFIP).
- O Starting in June, 2002, the County Growth Management Division staff will submit monthly to FEMA/NFIP, the names and addresses of approximately 450 owners (policy holders) of structures with possible violations of the County's floodplain regulations. The lists to be compiled and sent to FEMA will start with the newest structures working back through to the oldest structures.
- O As the first requests for inspections from property owners come forward after notification by their insurance companies, the County's Building and Code Enforcement staff will begin inspections and implement the downstairs enclosure compliance program as outlined in the Federal Register. [It is anticipated that actual inspections will not begin until October, 2002, which would mean that under the inspection program, the first group of unpermitted enclosures and improvements would not be brought into compliance until mid-2003.]
- O During the inspection program, the County staff will collect and record the amount and number of flood insurance claims submitted for each inspected structure to provide a data base for calibrating and updating any flood damage model.

Florida Keys Flood Damage Model

To assist Monroe County in its efforts to bring non-compliant buildings into compliance with its floodplain regulations, the Monroe County Commission is requesting that FEMA create or cause to create a Florida Keys flood damage model based on Florida Keys topography, historical records, and actual flood damage sustained, post-FIRM, by Florida Keys structures. It is anticipated that such a study could be completed in 2003, which would allow the County's floodplain compliance program to be modified, if approved by FEMA, based on the results of the damage model.

Remediation of Non-compliant Structures Including Those Older than Four Years

- O** The Board of County Commissioners will request its delegation to the Florida Legislature to address the four-year statute of limitations on code enforcement prosecution of violations of the County's floodplain regulations.
- O** The County's inspection program will include of all post-FIRM structures, including those more than four-years old identified as having a potential violation. The County Commission and its Growth Management Division staff believe that a significant percentage of structures more than four years old with unpermitted, non-compliant below base flood elevation improvements will voluntarily come into compliance through the multi-year flood insurance inspection program. As these structures are identified by the County staff through the flood insurance inspection program, the County will provide a list to FEMA of those structures that may have a potential violation, and which will require an inspection. If the owners of these structures refuse the inspection, their insurance will not be renewed by their insurer. The property owner of any structure inspected by the County that is determined to have a violation will have six months, if the violation is more than four years old, or two months, if the violation is less than four years old, to obtain a demolition permit to bring the structure into compliance. If the owner of a property with an identified violation chooses not to obtain the demolition permit by the deadline established above, or obtains the demolition permit but no approved final inspection occurs within 60 days after issuance of the demolition permit, the County will pursue one of the following actions as applicable:
 - 1) If the violation is less than four-years old, the County will expeditiously pursue code enforcement action and will formally submit a declaration for denial of the property owner's insurance to FEMA pursuant to Section 1316 of the National Flood Insurance if the structure is not brought into compliance.
 - 2) If the violation is beyond the four-year statute of limitations, the County will submit a declaration for denial of the property owner's insurance to FEMA pursuant to Section 1316 of the National Flood Insurance Act.

Actions to Ensure No New Additional Non-compliant Structures

- O** Although the County is currently limited by the four-year statute of limitations as to code enforcement action, the County through its County Growth Management Division will implement the following actions to ensure that any new violations are brought into timely compliance and do not become subject to the four-year statute of limitations barring code enforcement prosecution:
 - 1) Amend the existing floodplain regulations to require as a condition of its building permit that any new dwelling with an opaque below base flood

enclosure have a restrictive covenant allowing the County to inspect the structure on a periodic basis to ensure compliance with County floodplain regulations. [Amendments to the floodplain regulations will be in effect by no later than July, 2002.]

- 2) Require any structure found to be non-compliant during the flood insurance inspection program or code enforcement action have a restrictive covenant similar as that required for new construction proposed in 1) above, if an opaque below base flood enclosure is to be retained as a permit condition to bring the structure into compliance. [This requirement will be implemented through the above amendments to the floodplain regulations.]
- 3) Conduct inspections of dwellings with restrictive covenants to ensure compliance with the County's floodplain regulations, upon receipt of evidence establishing probable cause of a violation, or a minimum of once every four years.
- 4) Continue to vigorously pursue code enforcement action for violation of the County floodplain regulations through code enforcement and the normal permitting process, including prosecution of owners of structures more than four years old, where property tax records and/or evidence from site visits provide probable cause of a violation that is less than four years old.
- 5) Request that FEMA provide the County with a "Submit to Rate" for any applications for new flood insurance policies on previously uninsured properties with a possible violation , so that the County may pursue compliance under code enforcement proceedings, if the violation is less than four years old, or if older than four years, through a Section 1316 declaration.
- 6) Prepare for FEMA's approval by no later than September 30, 2002, a plan and administrative procedures, as part of the County flood insurance inspection program, for providing additional time to come into compliance for those non-compliant structures with below base flood enclosures occupied by very low to moderate income households, as defined under the Monroe County Code. [This proposal recognizes the difficulty in finding suitable replacement housing for the County's most at-risk population and would help mitigate the adverse impacts on these households and the County's affordable housing stock.]
- 7) Identify and compile for Monroe County's flood insurance inspection and compliance program a list of all structures that fail to come into compliance and submit a quarterly progress report to FEMA beginning July, 2003.

- 8) Evaluate Monroe County's flood insurance inspection and compliance program by June 2004, and if necessary, develop and implement further remedial actions with FEMA's approval, to ensure enforcement of the County's floodplain regulations.

The County Growth Management Division staff has the sufficient resources to implement the above program over a six year period.

PLANNING COMMISSION RESOLUTION NO. 69-02

A RESOLUTION BY THE MONROE COUNTY PLANNING COMMISSION RECOMMENDING APPROVAL TO THE BOARD OF COUNTY COMMISSIONERS OF THE REQUEST FILED BY THE MONROE COUNTY GROWTH MANAGEMENT DIVISION FOR AN AMENDMENT TO SECTIONS, 9.5-316.1 THROUGH 9.5-317 OF THE LAND DEVELOPMENT REGULATIONS CONCERNING AMENDMENTS TO THE FLOODPLAIN MANAGEMENT ORDINANCE.

WHEREAS, the Monroe County Planning Commission, during regular meetings held on September 11, 2002, September 25, 2002 and October 9, 2002 conducted a review and consideration of amendments to Article VII, Division 6, Sections 9.5-316.1 through 9.5-317 of the Land Development Regulations concerning the Floodplain Management Ordinance filed by the Monroe County Growth Management Division; and

WHEREAS, the Planning Commission examined the following information:

1. The staff report from Timothy J. McGarry AICP, Director of Growth Management and Dianne Bair CFM, Floodplain Administrator dated August 19, 2002; and
2. Proposed changes to the Monroe County Floodplain Management Ordinance; and
3. Development Review Committee resolution D 14-02; and
4. Testimony of Timothy J. McGarry AICP, Director of Growth Management and Dianne Bair CFM, Floodplain Administrator, comments by the public and members of the Planning Commission

WHEREAS, the Planning Commission recommended approval of the proposed ordinance except for section 9.5-317(b)(1) d. (iv)

WHEREAS, the Planning Commission made the following Findings of Fact:

1. Article XI of Chapter 9.5, the Monroe County Code sets forth the requirements for amending the text of the land development regulations. Specifically, Section 9.5-511(d)(5)b identifies six criteria for amending the land development regulations, one of which must be met. The proposed amendment is supported by Item (iv), which refers to New Issues.
2. The Board of County Commissioners ("BOCC") entered into negotiations with the Federal Emergency Management Agency ("FEMA") regarding the Monroe County Insurance Inspection and Compliance Program. FEMA directed the County to submit a remedial plan in order to avoid probationary status to ensure no new additional non-compliant structures would occur because of the four-year statute of limitations ruling by Judge Richard G. Payne. These amendments are the third phase of that remedial plan adopted by the BOCC resolution 187-2002 and are consistent with the minimum federal floodplain management regulations set forth in 44CFR Section 60.3.

WHEREAS, the Planning Commission made the following Conclusions of Law:

1. The proposed text amendment is consistent with Section 9.5-511 of the Monroe County Code.

2. The proposed text amendment is consistent with the minimum requirements set forth in FEMA's 44 CFR parts 60.3 and Florida Statutes 161.55 Requirements for activities or construction within the coastal building zone.
3. The proposed text amendment is consistent with Policy 217.1.5 of the Monroe County Year 2010 Comprehensive Plan, which provides that Monroe County shall continue to participate in the National Flood Insurance Program. The proposed text amendment is consistent with Policy 217.1.6, which provides that Monroe County shall continue to enforce federal, state and local setback and elevation requirements to promote the protection and safety of life and property.
4. The proposed text amendment is consistent with the goals of the Monroe County Year 2010 Comprehensive Plan; **NOW THEREFORE,**

BE IT RESOLVED BY THE PLANNING COMMISSION OF MONROE COUNTY FLORIDA, that based on the preceding Findings of Fact and Conclusions of Law, it **RECOMMENDS APPROVAL** to the Monroe County Board of County Commissioners amendments to Sections 9.5-316.1 through 9.5-317 of the Monroe County Land Development Regulations concerning the Floodplain Management Regulations except for language as shown in attachment A.

PASSED AND ADOPTED by the Planning Commission of Monroe County, Florida, at a regular meeting held on the 9th day of October 2002.

Commissioner David Ritz (Chair)	<u>Yes</u>
Commissioner Jerry Coleman	<u>Yes</u>
Commissioner Alicia Putney	<u>Yes</u>
Commissioner Denise Werling	<u>Yes</u>

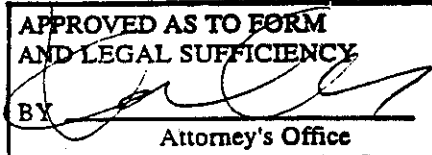
THE PLANNING COMMISSION OF MONROE COUNTY, FLORIDA

BY

David C. Ritz

David C. Ritz, Chair

Signed this 6th day of November, 2002.



ATTACHMENT A

Section 9.5-317(b)(1) d. (iv)

Staff Recommendation: (iv) Interior walls, ceilings and floors in enclosures may be finished with a class 4 or 5 exterior finish in accordance with FEMA Technical Bulletin 2-93. Technical Bulletin 2-93 limits the finish to basic wall, ceiling and floor construction. This is meant to exclude the use of materials and finishes normally associated with living areas constructed above the base flood elevation.

Commissioner Ritz	<u>NO</u>
Commissioner Werling	<u>YES</u>
Commissioner Coleman	<u>NO</u>
Commissioner Putney	<u>YES</u>

Planning Commission amendment:

(iv) Interior walls, ceilings and floors in enclosures may be finished with a class 4 or 5 exterior finish in accordance with FEMA Technical Bulletin 2-93. Technical Bulletin 2-93 limits the finish to basic wall, ceiling and floor construction. This is meant to exclude the use of materials and finishes normally associated with living areas constructed above the base flood elevation from those areas of the enclosure located below the base flood elevation.

Commissioner Ritz	<u>YES</u>
Commissioner Werling	<u>NO</u>
Commissioner Coleman	<u>YES</u>
Commissioner Putney	<u>NO</u>



Federal Emergency Management Agency

Region IV, Mitigation Division
3003 Chamblee-Tucker Road
Atlanta, GA 30341

October 2, 2002

Ms. Diane Bair, CFM
Floodplain Coordinator, Monroe County
2798 Overseas Highway
Suite 400
Marathon, FL 33050

Dear Ms. Bair:

This is in response to your letter of October 1, 2002, referencing the issue of finished areas both above and below the base flood elevation (BFE) in lower level enclosures. From your letter, it appears that the County desires to amend their ordinance to allow enclosures to have finished areas as long as they are above the base flood elevation. As you are aware the regulations contained in 44 CFR 60.3 and various Technical Bulletins address unfinished and flood resistant materials. The guidance addresses the issue to apply only to areas below the base flood elevation. That implies that enclosed areas beneath elevated buildings can have finished areas above the base flood elevation.

In Monroe County, the present ordinance and building climate has had mixed results on controlling the degree of finished and non-flood resistant materials throughout the entire enclosure. By amending the ordinance to specifically allow finished and non-flood resistant construction above the base flood elevation in these enclosures would further exacerbate a problem that both FEMA and the County agree exists. This is likely to be the case even with restrictive covenants in place. In addition, as part of the agreement with the County pursuant to accepting an Insurance Inspection Program in lieu of probation/suspension, it was the County's charge and commitment to develop ways to discourage the further conversion of uninhabitable enclosures to full living areas. Weakening your flood ordinance goes against this agreement and pledge from the County.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad G. Loar", is written over a horizontal line.

Brad G. Loar, CFM, Chief
Community Mitigation Programs Branch
Federal Insurance and Mitigation Division

LIMITED STORAGE AND PARKING RESTRICTIVE COVENANT

WHEREAS, _____, the undersigned is/are the sole owner(s) of the following described real property located in Monroe County, Florida described as follows:

Lot(s):____, **Block:**____ **Sub:**_____ ,

PB:_____;

Real Estate Number: _____; **Permit No.**_____

WHEREAS, this Limited Storage and Parking Restrictive Covenant prohibits enclosed areas below the above described elevated building from being constructed as, converted to or equipped for habitational use and said enclosed area shall be restricted to entry or limited storage and parking only;

NOW, THEREFORE, Pursuant to Section 9.5-317(b)(1)d.(1) of the Monroe County Floodplain Management Regulations the undersigned agree as follows:

- The property described above at paragraph 1 shall be entitled to enclose area below the elevated building for entry or limited storage and parking only.
- This covenant authorizes an inspection of the enclosed area below the elevated building once every four years or upon probable cause that a violation of the Monroe County Floodplain Management Regulations exists.
- This covenant authorizes the County or its agents access to the property for the limited purpose and only to the extent reasonably necessary to inspect the enclosure constructed below base flood elevation for compliance with the Monroe County Floodplain Management Regulations. Such inspections shall only take place between the hours of 8:00 AM and 5:00 PM weekdays, excluding state and federal holidays, upon prior written notice of not less than thirty (30) days sent by certified mail to the owner at the current postal address maintained by the Monroe County Property Appraiser.

- The restrictions herein shall be binding upon the representatives, heirs, assigns and successors in title of the undersigned; it being the intention of the undersigned by execution and recording of this document that this restriction shall run with the land and shall be binding in perpetuity upon the successors in title; and
- This covenant is intended to benefit and run in favor of the County of Monroe; and
- In the event of a violation of this covenant, the County may enforce the covenant by injunction or such other legal remedy, as the County deems appropriate. In any action to enforce or defend these covenant provisions the prevailing party in any litigation shall be entitled to reasonable legal fees.

EXECUTED ON THIS _____ day of _____, _____.

WITNESSESS:

OWNER OR OWNERS:

(Signature)

(Signature)

(Print/Type Name)

(Signature)

(Print/Type Name)

Sworn before me this _____ day of _____, _____ A.D.

Notary Public (Print Name)

Notary Public (Signature)
My Commission Expires _____

This instrument was prepared by:

ORDINANCE NO.

AN ORDINANCE AMENDING SECTIONS 9.5-316.1, 9.5-316.2, AND 9.5-317, MONROE COUNTY CODE; PROVIDING FOR REORGANIZATION; PROVIDING FOR DEFINITIONS; PROVIDING FOR RESTRICTIVE COVENANTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES INCONSISTENT HERWITH; PROVIDING FOR INCORPORATION INTO THE MONROE COUNTY CODE; AND DIRECTING THE CLERK OF THE BOARD TO FORWARD A CERTIFIED COPY OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The County Commission at their meeting held at the County Courthouse in Key West, Florida, June 11, 1974, passed unanimously Ordinance 2-1974 and by their action duly expressed willingness to take action necessary to meet the objectives of the National Flood Insurance Act of 1968; and

WHEREAS, the latest floodplain maps were adopted by Monroe County on June 5th, 1989; and

WHEREAS, there are now certain new issues and need for additional detail regarding Sections 9.5-316.1, 9.5-316.2, and 9.5-317 of the floodplain management ordinance; and

WHEREAS, the Monroe County Planning Commission sitting as the local planning agency, after due notice and public participation, has reviewed the proposed amendments and recommends approval except for the last sentence in Section 9.5-317(b)(1)d.(iv); and

WHEREAS, the Board of County Commissioners examined Sections 9.5-316.1, 9.5-316.2 and 9.5-317, Monroe County Code, concerning amendments to the floodplain management ordinance submitted by the Monroe County Growth Management Division and recommended by the Monroe County Planning Commission; and

WHEREAS, The Monroe County Board of County Commissioners hereby supports the decision of the Planning Commission and recommendations of the Growth Management staff; and

WHEREAS, it is the desire of the Board that the following amendments to the land development regulations be approved, adopted and transmitted to the state land planning agency for approval;

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:

Section 1. Sections 9.5-316.1 and 9.5-316.2, Monroe County Code, are amended to read as follows (additions and deletions shown in an underline and strikethrough format):

Sec. 9.5-316.1. General provisions.

(a) *Applicability:* No structure or manufactured home hereafter shall be located, extended, converted or structurally altered without full compliance with the terms of this division in addition to other applicable regulations of this chapter.